



Indiana Brownfields Program  
100 North Senate Avenue, Room 1275 • Indianapolis, IN 46204  
[www.brownfields.in.gov](http://www.brownfields.in.gov)

## GUIDANCE ON COMPETITIVE BIDDING

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Pursuant to Indiana Brownfields Program (Program) guidelines for the Stipulated Assessment Grant, Stipulated Remediation Grant and Low-Interest Loan incentives, grant and loan recipients (Recipients) must demonstrate that services to be reimbursed with grant or loan funding have been competitively bid. Professional services must be procured in compliance with Indiana Code (IC) 5-16-11.1 and activities other than professional services are required to be procured in compliance with IC 36-1-12.<sup>1</sup> Because site assessment and remediation activities are being paid for with public funds, the Program seeks to ensure contracts are awarded through an open, fair and competitive process, ensuring the most judicious use of public funds and compliance with Indiana's public bidding laws.

Program Project Managers are available to assist Recipients in developing bid specifications for work to be paid with grant funds. Recipients that do not submit detailed information<sup>2</sup> demonstrating a competitive bidding process with their grant and loan applications will be required to do so before any funding will be disbursed under a grant or loan agreement. A summary of the applicable statutes is provided below, in addition to a chart further detailing the requirements for bidding under each statute. These materials are summaries only. Please consult applicable local guidance and the Indiana Code for complete information on the legal requirements for competitive bidding.

### Procedures for Procurement of Services by Architects, Engineers, and Land Surveyors (Professional Services)

- **IC 5-16-11.1:** Title 5 - State And Local Administration; Article 16 - Public Works; Chapter 11.1 - Procurement of Services of Architects, Engineers, and Land Surveyors
  - ♦ A political subdivision *may* provide public notice (not mandatory) that it intends to utilize "professional services" for a project. IC 5-16-11.1-4(a).

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<sup>1</sup> As a guideline, Phase I environmental site assessment work and work to prepare work plans or bid specifications has been considered by the Program to be "professional services." Any other site activities (e.g., installing monitoring wells or utilizing a geoprobe) would likely not be deemed to be professional services and therefore should be bid according to IC 36-1-12.

<sup>2</sup> The requirement to submit "detailed information" demonstrating a competitive bidding process can be satisfied by written memo summarizing the process undertaken by the Recipient to select a contractor including, but not limited to, as applicable, outlining the public notice provided, number of responsive bids received, copy of the written justification for rejecting responsive quotes or rejecting the lowest responsible and responsive bid, and copies of "Contractor's Bid for Public Work – Form 96" for projects > \$100,000. In general, the written summary must satisfactorily demonstrate to Program staff that the various statutory steps for competitive bidding were undertaken in selecting the contractor that will be paid with grant or loan funds.

- ◆ If the agency *does* provide public notice, it must include: (1) location of project; (2) general description of project; (3) general criteria to be used in selecting the professional services firm; (4) place where additional project specs are on file; (5) business hours kept by political subdivision; and (6) deadline for accepting statements of qualifications from professional service firms. IC 5-16-11.1-4(b).
- ◆ A political subdivision has discretion to determine the criteria it will use to make its decision. IC 5-16-11.1-5.

### **Procedures for Selecting a Contractor to Complete a Public Works Project**

- **IC 36-1-12:** Title 36 - Local Government; Article 1 - General Provisions; Chapter 12 - Public Construction
  - ◆ The “competitive bidding” procedures depend on cost of project and size of political subdivision that is conducting the project. (IC 36-1-12-4; IC 36-1-12-4.7; IC 36-1-12-5).
  - ◆ A political subdivision shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. IC 36-1-12-4(b)(1).
  - ◆ A political subdivision is *not* required to accept the lowest responsible and responsive bid *but* it must follow certain procedures if it does not select the lowest responsible and responsive bid.

### **Chart Summarizing Requirements Based on Project Size & Type of Political Subdivision**

(A) Second Class or Consolidated City or County Containing Second Class or Consolidated City or Regional Water or Sewage District

(B) Any Other Political Subdivision

“Board” means the board or officer of a political subdivision or an agency having the power to award contracts for public work. IC 36-1-12-1.2.

<b>Project Size &amp; Type of Political Subdivision</b>	<b>Responsibility of the Board</b>
<b>(A) &amp; (B) Project Cost &lt; \$25K</b>  <b>IC 36-1-12-5</b>	<ul style="list-style-type: none"> <li>• Board shall invite quotes from at least three (3) persons known to deal in the type of work</li> <li>• Invitation shall be done by mail at least seven (7) days prior to the deadline to submit quotes.</li> <li>• Invitation shall include notice that the plans &amp; specs are on file in an office</li> <li>• All quotes shall be opened publicly and read aloud at time &amp; place designated and not before then</li> <li>• AWARD PROJECT TO:               <ul style="list-style-type: none"> <li>◆ Lowest Responsible &amp; Responsive (“LR&amp;R”) bidder;<sup>3</sup> OR</li> <li>◆ Reject all bids</li> </ul> </li> <li>• IF Board rejects all bids, the Board <i>may</i> negotiate and enter into agreements for the work in the open market w/o inviting or receiving quotes IF the Board establishes <i>in writing</i> the reasons for rejecting the quotes</li> </ul>

<sup>3</sup> Pursuant to IC 36-1-2-15.5(a), “Responsible bidder or quoter” means one who is capable of performing the contract requirements fully and who has the integrity and reliability that will assure good faith performance. Pursuant to C 36-1-2-15.5(b), “Responsive bidder or quoter” means one who has submitted a bid or quote conforming in all material respects to the specifications. *See also* IC 36-1-12-4(b)(10) and (11) for optional factors to consider in determining whether a bidder is “responsive” and “responsible.”

Project Size & Type of Political Subdivision	Responsibility of the Board
<p><b>(A) Project Cost &gt; \$25K but &lt; \$75K</b></p> <p><b>And</b></p> <p><b>(B) Project Cost &gt; \$25K but &lt; \$50K</b></p> <p><b>IC 36-1-12-4.7</b></p>	<ul style="list-style-type: none"> <li>• Board shall invite quotes from at least three (3) persons known to deal in the type of work</li> <li>• Invitation shall be done by mail at least seven (7) days prior to the deadline to submit quotes.</li> <li>• Invitation shall include notice that the plans &amp; specs are on file in an office</li> <li>• All quotes shall be opened publicly and read aloud at time &amp; place designated and not before then</li> <li>• AWARD PROJECT TO: <ul style="list-style-type: none"> <li>◆ Lowest Responsible &amp; Responsive (“LR&amp;R”) bidder; OR</li> <li>◆ Reject all bids</li> </ul> </li> </ul>
<p><b>(A) Project Cost &gt; \$75K</b></p> <p><b>And</b></p> <p><b>(B) Project Cost &gt; \$50K</b></p> <p><b>IC 36-1-12-4</b></p>	<ul style="list-style-type: none"> <li>• Prepare general plans &amp; specs describing the public work required</li> <li>• File the plans &amp; specs in a place reasonably accessible to the public</li> <li>• Publish Notice in accordance with IC 5-3-1 calling for sealed proposals, specifying place where plans are filed and deadline for submission</li> <li>• Board has discretion to determine deadline for submitting bids but cannot be later than six (6) weeks after Notice</li> <li>• All Bids shall be opened publicly and read aloud at time &amp; place designated and not before then</li> <li>• AWARD PROJECT TO: <ul style="list-style-type: none"> <li>◆ Lowest Responsible &amp; Responsive (“LR&amp;R”) bidder; OR</li> <li>◆ Reject all bids</li> </ul> </li> <li>• If LOWEST bidder is NOT selected, Board must state in minutes or memoranda the factors used to determine LR&amp;R and justification for the award (IC 36-1-12-4(b)(9)).</li> <li>• Statute provides discretionary factors the Board may consider in determining a “responsive” and “responsible” bidder (IC 36-1-12-4(b)(10) and (11)).</li> </ul>
<p><b>(A) &amp; (B) Project Cost &gt; \$100K</b> <b>(in addition to the above)</b></p>	<ul style="list-style-type: none"> <li>• Bidder must submit a financial statement, statement of experience, proposed plan for performing the work, equipment to be used (IC 36-1-12-4(b)(6))</li> <li>• Board <i>must</i> employ services of a licensed architect or engineer if the project is a <i>public building</i> and &gt; \$100K (IC 36-1-12-7)</li> </ul>

For questions regarding this guidance please contact Sara Westrick Corbin, Financial Resources Coordinator, at (317) 234-1688 or [swestrick@ifa.in.gov](mailto:swestrick@ifa.in.gov) or Meredith Gramelspacher, Assistant Director and General Counsel, at (317) 233-1430 or [mgramels@ifa.in.gov](mailto:mgramels@ifa.in.gov).